

Health Information Compliance Alert

Labor Law: Know the Facts on Mandatory Vaccines Under ADA, Title VII

Critical: Would an unvaccinated person pose a 'direct threat' under the law?

If you're struggling to get your staff vaccinated, you can refer to recent Equal Employment Opportunity Commission (EEOC) guidance around the issue for labor law compliance concerns.

The EEOC recently issued Technical Assistance Questions and Answers regarding vaccinations for its "What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws" guidance document.



Key clarification: "The administration of the vaccine is not a medical examination under the ADA," emphasize attorneys **Dana Stutzman** and **Claire Bailey** with Hall Render. "Because the employer is not seeking medical information from the employee by simply administering the vaccine, the EEOC does not view vaccine administration as a medical examination. But this doesn't resolve all ADA-related issues for the employer," the attorneys warn in online analysis.

However, "in the context of mandatory COVID-19 vaccines, the pre-screening questions necessary to safely administer the vaccine are generally subject to the ADA's standards for disability-related inquiries," Stutzman and Bailey caution. "Pre-screening questions associated with mandatory vaccines would satisfy the Business Necessity Standard if the employer has a reasonable belief, based on objective evidence, that an unvaccinated person would pose a 'direct threat' to the health or safety of self or others," they point out.

Bottom line: "Mandatory COVID-19 vaccines (and the pre-screening questions) pass muster under the ADA and Title VII," the Hall Render attorneys pronounce.

But employers should remember that such requirements may burden an already strained staffing environment, experts point out.

Resource: The EEOC Q&As are at www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws.